

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5521 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SHARADA GANESH PANDIT WILL TRUST

Versus

GHULAMHUSAIN GHULABNABI SHAIKH

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Appearance:

MR MI MERCHANT for Petitioner

NOTICE SERVED for Respondent No. 1, 2

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/12/1999

ORAL JUDGEMENT

#. The appellant filed a suit being Civil Suit No. 4229 of 1984 in the City Civil Courts at Ahmedabad for a declaration that the respondents have no right to use the suit land situated on the western side of the shop bearing no. MC No. 4707 of 26 and also the shed constructed thereon admeasuring 10 ft. x 8 ft., and for mandatory injunction directing the defendants to remove the said shed and to hand over vacant and peaceful

possession of the entire premises. The appellant has also prayed for mandatory injunction directing the respondent no.2 to close the door on the back side wall of the shop and restraining him from putting up any further door in the said wall and from entering in the land situated on the back side of the shop through the said door. The appellant has claimed Rs. 1300/- by way of mesne profits from 1.8.82 till the date of the suit at the rate of Rs. 50/- along with the interest at the rate of 6% per annum. It is further prayed in the suit that mesne profits at the rate of Rs. 50/= are to be paid from the date of the suit till the possession is taken.

#. Learned trial Judge by his judgment and decree dated 18th August, 1998 partly allowed the suit by declaring that the respondents have no right to use the suit land described in para 11 of the plaint and also the shed constructed thereon, and the respondents are directed to hand over vacant and peaceful possession of the suit land to the appellant after removing the construction of the shed made thereon.

#. The appellant-plaintiff has filed the present appeal for the reliefs not granted by the trial court. It is the grievance of the appellant that even though the relief of permanent injunction was prayed for in para 8 of the plaint, the same has not been granted. It is also the grievance of the appellant that the trial court has not granted the mandatory reliefs regarding illegal door put up by the respondents on the eastern wall of the shop though the finding of the learned trial Judge in the judgment is in favour of the appellant. Finally, it is contended that the trial court has not granted mesne profits to the appellant even though the court has come to a conclusion that the respondents have trespassed over the land in question.

#. Learned counsel for the respondents today filed a pursis duly signed by the respondents who are present in the court. In the said pursis, they have stated that they accept the decree passed by the trial court against them in toto. Not only that but they have stated in the pursis that the reliefs claimed in para 8 of the plaint are also acceptable to them and they are prepared to abide by the same. They have stated in the pursis that they will have no objection if the appeal is allowed and the decree as prayed for is granted in favour of the appellant. The said pursis is taken on record. In this view of the matter, the appeal is allowed. Over and above the reliefs granted by the trial court, it is further directed that the respondents have no right to

use the suit land and they are permanently restrained from using the suit land. The relief in the nature of mandatory relief is granted directing the respondents to close the door put up by them on the eastern wall of the shop. The respondents are directed to pay the amount of mesne profits of Rs. 1300/- till the date of filing of the suit. It is further directed that the respondents shall pay the amount of mesne profits at the rate of Rs. 50/- from the date of filing of the suit till the vacant and peaceful possession of the suit land is handed over to the appellant. At the request of the respondents, time to hand over vacant and peaceful possession and to pay the mesne profits is granted upto 30th June, 2000. It is made clear that the respondents shall hand over vacant and peaceful possession of the suit land and shall pay the amount of mesne profits till the said date along with the interest at the rate of 6% per annum. The appeal is accordingly allowed with no order as to costs. Decree to be drawn accordingly.

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